K 921.

Examined

File No. S. Belgaum 7/51

Legal **DEPARTMENT**
~~A~~ **BRANCH**

Subject:— Suit Belgaum

In the court of the Civil Judge (S.D.)
Civil Suit No. 32 of 1949
Devarao Krishnarao Deshpande } -Plff
and others
vs.
The chief Administrator, Sangli } -Defts
and others.

For a declaration that the Plffs have a right to take water from the stream and for an injunction restraining the Govt and other defendants from Varniwah thereof

P=10
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S. Belgaum 7/51

File No.

Bld. Sectt. Slip 24-B

S. Bel 7/51

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Suits Belgaum

C.S. No. 32 of 1949

Devrao Krishnarao Deshpande and others

Vs.

The chief administrator and others.

For a declaration that the plffs have a right to take water from the stream and for an injunction restraining the Govt and other defts from wahiwat there of.

3/1

Letter.

To:

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Regular Suit No.32 of 1949.
Report under rule 118 of Law Officers Rules.

Reference:-Your D.O.Letter No. 8658 dated 23-6-1950.

...

L. D. 15 JUL 1950

No.L.AW. 873. Belgaum, 13th July 1950.

The information regarding the regular Suit No. 32 of 1949 as required under rule 118(1) of Law Officers Rules is given below:-

THE SECRETARY TO GOVERNMENT LEGAL DEPARTMENT No. 12309 18-7-50

(i) Regular suit No.32 of 1949;
(ii) Originally filed on 6-9-1943 in the court of the Civil Judge,Sangli; Now transferred to the file of the Civil Judge, S.D.Belgaum;

(iii)(1) Deorao Krishna Deshpande residing at Kardiguddi by his attorney Narayan Deorao Desh-pande residing at Kardiguddi
(2) Fakirappa Bhimappa Shimpi residing at Karidiguddi. } Pltff.

VS

(1) Ramchandra Annaji Kulkarni residing at Kardiguddi.
(2) Baburao Abarao Kulkarni residing at Belgaum.
(3) Appaya Pattappa Halamani residing at Marihal.
(4) Vishnu Nagesh Chate, re-siding at Marihal.
(5) Ganesh Govind Chate.
(6) State of Bombay(Sangli State since merged with the State of Bombay.) } Defts.

(iv) Claims for court fees & Jurisdiction:- Rs.5/-
(v) First date for filing the written statement was:---- 8-12-1949;
The next date fixed is :- 14-7-1950.
(vi) Notice of Suit under sec.80 of C.P.C. served on the Diwansaheb of Sangli on 2-7-1943 is at page 141 of file No.I.

2. The following papers are sent herewith as re-quired by rule 118(2) of the Law Officers Rules:-
(a) A copy of the plaint in Marathi is at page 177 of file No.I;
(b) Translation of the plaint in English(in dupli-cate); A sketch showing the neighbouring lands appears to have been annexed to the plaint.
(c) A chronological statement of facts and the grounds on which it is proposed to defend the suit (in duplicate).
(d) Case papers in two files.

P.T.O.- - - - -

files. . . . . .

3. The District Government Pleader Belgaum is being requested to take a long adjournment till Government sanction to defend the suit is received. Necessary instructions may please be issued early to defend the suit.

For Collector of Belgaum.

V-12/7.

Copy forwarded with compliments to the District Government Pleader, Belgaum, with a request to take a very long adjournment till Government sanction is received.

Translation of the plaint

S.No.18 of 1943.

In the Court of Ilakha Sangli Deccan State, Sangli.

(1) Narayan Devaraya Deshpande, of Kardeguddi, age 37, Brahmin, Inamdar, Vetmakhatyar of Devaray
(2) Krishna Deshpande of Kardeguddi Fakira Bhimappa Simpi Simpi, tai-lor, age 40/45, of Kardeguddi. } Applicant.

VS.

(1) Ramchandra Annajai Kulkarni, Brahmin, Vatandari, age, 45,
(2) Baburao Abarao Kulkarni, Brahmin, Age, 50, at Belgaum,
(3) Basavant Basa pa Yallapanawar, Lingayat, Agriculture, age 45, of Marihal.
(4) Appaya Patreppa Halmani, Agriculture age 40 at Belgaum.
(5) Krishnaji Nagesh Chate, of Belgaum (Dead).
(6) Vishnu Nagesh Chate of Marihal.
(7) Ganesh Govind Chate of Marihal. } Opponent.

After Merger of State, Province of Bombay).

Suit amount:-
Court fee:- Rs.5/-

Applicants complaint is as under:-

A nala called 'Chalkatti' flows through the borders of the territory of Kardeguddi and Marihal villages. This nala begins to flow from Kardeguddi. It flows from through the applicant No.1's land called 'Kolad-Adavi' and entters into S.No.41, of the Marihal. The people Kardeguddi and the Inamdar of the Village use to construct dams accross the nala and get irrigate their lands. The Inamdar has right over the water of the nala and it is in the wahiwat of the Inamdar . A sketch sh-owing the neighbouring lands is produced.

In the land called 'Dodhalla' situated near the S.No.65 of Marihal village, a dam is constructed shwon at 'A' in the Sketch. This dam is used to construct in the month of Nov. every year & it will last in the month of May. Lands at Applicant No. 1, called 'Khamg' and Shingyache lands are irrigated from the nala water and also applicant No.2's land called Mandevar. Other lands also irrigated from this nala water.

Similar way a dam is constructed at place B shown in the sketch near S.No.42 of Marihal and land called Berigeri of the applicant No.1 is irrigated. This was the practice upto theyear 1931.

Opponents are obstructing to the wahiwat of the applicants and they obstruct to use the wat r of the Nala . From the fact, the opponants have no right to obstruct the wahiwat of the spplicant. It leaus us to file a suit for an injunction to opponant not to obstruct the applicant in using the water. This cause of action arose on 15-3-33. This suit is for an injuction, therefore, the court fee of the case is Rs.5/- and six annas stamp is affixed.

The dams at the applicants and opponants are situated in the jurisdiction of the said Court and it has power to try the case.

Opponants are denying the right of the applicant, that their suit is filed against them. As to get decide the matter finally, opponants are made party to the suit, and the Notice has been served is leagal as per rules of the Sangli State.

Dated 6-9-43.

V.R.Phadake.

Applicants request is as under:-

Applicants have to be allowed to construct dams & use the eater and to thaspponants should not obstruct.

Cost of the suit may be paid. We pray for the justice.

The applicants may be permitted to change the substance in the suit.

5/1

Belgaum Civil Suit No.32 of 1949

1. This is a suit for a declaration that plaintiffs have a right to take water from the stream known as Chalkathi and for injunction.

2. The suit was originally filed in the Court of the District Judge, Sangli. The written statement of the Sangli state is at page 167 of the file. After merger, the State of Bombay is impleaded as a party.

3. The suit is defensible.

4. The defence of the suit may be sanctioned on the lines of the accompanying brief.

Reg
7/10

A.L.R.:-

Resubmitted.

1) The only law under which the order of the Diwan of Sangli can fall is S. 23 of the Mamlatdar's Courts act of 1906, and the order of the Mamlatdar, Shahapur dated 1/1/27 can fall under S. 5 (2) of the said act. However it is not known when this act was adopted in Sangli state.

2) If this view is not approved, the question at issue between the contending parties may be left to the decision of the Civil Court. In that case, the D.G.P may be instructed to put in the following Written Statement:—

a) In view of the govt's ownership of the stream known as Chalkathi & the orders passed by the Diwan of Sangli on 3/12/25 and the mamlatdar, Shahapur on 1/1/27, regarding the claims of the rival claimants to erect dams & irrigate their fields from this stream

the plffs' claim, as made out in the plaint, could not be admitted otherwise than under a decree of a Competent Court.

2) Whatever rights the plffs may have as against in respect of the subject matter of the suit the govt of Sangli State, the present govt, as successor to the Sangli State, is not liable to be sued in respect thereof.

3) In any event, the govt's costs should be awarded.

PMG
17/10

~~A.G.P.~~

Submitted for sanction the news grounds is added as directed.

PMG
16/11

Addl Solicitor :—

approved,

16/11 PMG

Secy. R.D. 80
17/11

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
17 NOV 1950 B

17/11/50

Govt No. 16071
dt 17/11/50

No.16261

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 21st Nov. 1952.

Subject:- Belgaum Civil Suit No 320/1949

MEMORANDUM.

The District Government Pleader, Belgaum., is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance.

Papers of the case in files II (Turi Case) received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum.

Brief for Sup
Neg
-5/11

kam. 20.4.50.

Issued
CSP
21/11

In the Court of Civil Judge, Senior Division

at Belgaum.

Suit No. 32 of 1949.

Devarao Krishnarao Deshapande and another... Plaintiffs.

versus

The State of Bombay (after merger of Sangli State)..Defendants

Herein the Written Statement on behalf of ~~Defendant~~ the State of Bombay is as follows:-

1) The defendant denies the plaintiffs' suit in toto.

2) In view of the averments made by the plaintiffs in para, 1 and 2 of the plaint that the right to construct dams on the streamlet in dispute vests in the villagers and Inamdars of Kardeguddi the suit must be a representative one. Consequently the present suit as framed is not maintainable.

3) The averments made by the plaintiffs in para 1,2,& 3 of the plaint, regarding the ownership of the bed of the streamlet and the water therein are denied by the defendant. The streamlet and the water therein are the property of the Government, this defendant.

4) As the plaintiffs are neither the owners of the streamlet nor the water therein nor have they acquired any rights by prescription, the plaintiffs cannot claim ~~as a matter of~~ right to construct dams on and irrigate their ~~feilds~~ fields from the streamlet known as "Chalkatti Nala or Shivecha Odha".

5) The matter regarding the right to take water from the streamlet known as Chalkatti was agitated as far back as in 1925 and 1927 and it was then decided by the Sangli State authorities that the villagers of Kardeguddi had no right to take water from this streamlet. The Plaintiffs' suit is therefore, not maintainable.

6) The allegations made by the Plaintiffs in the plaint that they have been making use of the stream-water from times immemorial are denied. The Plaintiffs have not acquired any

such right as against ~~the~~ Government by prescription.

7) The Plaintiffs' unauthorised diversion of the stream-water has caused material injury to the other riparian owners. The Plaintiffs therefore cannot claim this right to erect dams on and take water thereof from the stream.

8) Assuming without admitting that plaintiffs have been irrigating by means of Kacha dams they are still not entitled to claim any relief either for declaration or for injunction against this defendant i.e. Government in view of the Government's inherent right to regulate collection, retention and distribution of stream-waters flowing in natural Channels. The Plaintiffs' suit is therefore not tenable.

9) Assuming without admitting that the plaintiffs have had any such right as contended by them in the plaint, against the Government of Sangli State, such alleged right could not be legally enforced against this defendant i.e. the successor Govt. by merger. The suit is therefore not tenable.

10) The Plaintiffs' suit is barred by limitation under article 14 or 120 of the Schedule I to the Indian Limitation Act.

11) Plaintiffs are not entitled to the declaration or injunction sought for by them.

12) Without prejudice to the above contentions, this defendant adopts all the contentions raised on merits by the Sangli State by the Written Statement already filed.

For these reasons the Plaintiffs' suit may be dismissed with costs.

District Government Pleader,
Belgaum.

I, ... District Government Pleader, Belgaum do hereby declare that what is stated in Paragraphs 1 to 12 above is true according to the information received and believed to be true.

This verification is made at on the day of January 1951.

District Government Pleader,
Belgaum.

BM.
2.1.

Nva. Orig. Suit No. 18 of 1943. 1333

Ex. 79.

I S S.U E S.

1. Whether the plff shows the rivulet Challikatti runs through the limits of the village Karadeguddi? If yes,

2. Whether the plff has got the right of appropriating the waters of the rivulet for the use of his agriculture by putting bunds within the limits of the village of Karde-guddi as shown in sketch filed with the plaint Ex. 54 ?

3. Has the plff acquired any such right by continuous and immemorial user against the defts or any of them ?

4. If yes, does he prove that defts or any of them obstructe him in the enjoyment of his right on or before 15-3-1933?

5. Whether the plff shows that there is any cause of action against defts 8 and 9 ?

6. When has the cause of action for the suit arisen to the plff ?

7. Is the present suit barred by limitation on the ground that it is not filed within one year from the date of the orders of Revenue Officer on 3-12-1925 or any other ground

No more sought.

13-7-1948.

sd. -
Joint District Judge,
Sangli.

Suits:

Belgaum.

For a declaration that plaintiffs have a right to take water from the stream and for an injunction restraining the Government and other defendants from the vahiwat thereof.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1029.

Bombay Castle, 16th January 1951.

Letter from the Collector of Belgaum No. L.A.W. 873, dated the 13th July 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 32 of 1949.

Devarao Krishnarao Deshpande and others ... ... Plaintiffs;

versus

The Chief Administrator, Sangli and others ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum No. 16261, dated the 21st November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

G. R., L. D., No. 1029, dated the 16th January 1951.

To

*The Revenue Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. _ _ of 1951.

Copy forwarded for information and guidance to

37/17

BELGAUM CIVIL SUIT No. 32 OF 1949.

Chronological Statement of Facts.

1. This is a suit for a declaration that the plaintiff have a right to take water from the stream, known as Chalkatti by constructing a Kaccha bandhara and for injunction restraining Government and other defendants from obstructing the plaintiffs in the vahiwat thereof.

2. The stream known as "Chalkatti" flows between two villages, Marihal and Kardeguddi within the boundary of the Sangli State (now the State of Bombay).

3. There was a long-standing dispute between the villagers of Marihal and Kardeguddi in respect of the erection of dams on and the irrigation of their fields from the stream. The dispute was decided by the Mamlatdar of Shahapur on the 8th August 1947. Being aggrieved by this decision, the villagers of Kardeguddi appealed to the Diwan Saheb of Sangli. On the 3rd December 1925 the Diwan Saheb gave the decision holding that the people of Marihal had a right to erect dams across the stream touching both the banks of the stream, as shown in the map.

4. In spite of this decision, the villagers of Kardeguddi went on constructing dams adjacent to the dams of Marihal people. The villagers of Marihal complained to the Mamlatdar about this construction. The Mamlatdar of Shahapur ordered on the 8th December 1926 that the disputed dam be removed and the people of Kardeguddi were permanently restrained by an injunction from obstructing the villagers of Marihal in the matter of construction of damson the stream. The people of Kardeguddi went in appeal to the Assistant Revenue Officer ot the State. In appeal the case was remanded to the Mamlatdar for disposal after taking evidence and on inspection of the site. On the 1st January 1927 the Mamlatdar confirmed the original decision dated the 8th December 1926.

5. It seems from the Collector's report in the case that this dispute was taken to the Civil Court up to the second appeal. It was held in all Courts that the suit was not maintainable in the absence of the Sangli State as a party.

6. On the 1st July 1943 the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code and on the 12th November 1943 they filed this suit in the Court of the District Judge, Sangli. After merger the suit was transferred to the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. *Limitation.*—It should be contended that the suit is barred under article 14 or 120 of the Schedule 1 to the Indian Limitation Act. The dispute between the people of Marihal and Kardeguddi as regards the erection of dams and irrigation by means thereof, on the stream known as "Chalkatti" was finally decided on the 3rd December 1925 by the Diwan Saheb of Sangli. The order, passed by the Diwan Saheb was neither appealed against nor was it challenged in Civil Court until the year 1943. The order was legal and *intra vires* the officer. It should, therefore, be contended that the suit was barred under article 14 of the Schedule 1 to the Indian Limitation Act. Assuming that the article 14 is not applicable to the case it can still be contended that the suit, not being filed within six years from the date of the order, is barred under article 120 of the Schedule 1 to the Indian Limitation Act.

2. The plaintiffs ~~contend~~ aver in paragraph 2 of the plaint that the right to construct dams on the streamlet vests in the whole village of Kardeguddi. Consequently the suit ought to be a representative one. The District Government Pleader should move the Court to direct the plaintiff to amend the plaint accordingly. Otherwise, it should be contended that the suit, as framed is not maintainable.

3. The plaintiffs claim to be riparian owners of certain lands on the banks of the stream known as "Chalkatti" and as such they claim an ancient right to irrigate these lands by a temporary bund, every year. It is necessary to state briefly the law relating to the rights of the riparian owners, in order to understand the plaintiffs' case. Every owner of a riparian land has the right to the usufruct of the stream, which flows through it. This right, to the benefit and advantage of the water flowing past his land is not an absolute and exclusive right to the flow of all the water in its natural state but is a right only to the flow of water and enjoyment of it, subject to the similar rights of all the proprietors of the banks on each side to the reasonable enjoyment of the same gift of providence. (*Vide* Dinkar *v.* Narayan, 7 Bom. L R. 265). By the general law applicable to running streams every riparian proprietor has a right to what may be called the ordinary use of water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have in case of a defeciency upon proprietors lower down the stream. But, further he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not, thereby, interfere with the rights of other proprietors either above or below him. Subject to this condition he may dam up the stream for the purpose of irrigation; but he has no right to interrupt the regular flow of the stream, if he, thereby, interferes with the lawful

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use of water by other proprietors and inflicts on them a sensible injury" (per Lord Kingdom in minor *v.* Gulmour 1858, 12 Moc. P.C.P. 156, Gale on Easements P. 258).

4. A riparian owner of a land adjacent to a natural stream having a defined and known channel, has, therfore a right (1) to the ordinary use of water for domestic purpose, and (2) to the extraordinary use such as irrigation provided he does not thereby abridge the natural rights of other riparian proprietors Illustration (j) of section 7 of the Indian Easement Act recognises these rights of the riparian owners subject to the limitation, mentioned above.

5. Now the right which the plaintiffs claim is right to divert the waters of the stream for the purpose of irrigating their lands. The plaintiffs cannot claim this right if such use causes material injury to the other riparian owners. It was found by the Mamlatdar of Shahapur in 1927 that the construction of Kacchha bandhara by the plaintiffs resulted in a considerable reduction of water supply available to the villagers of Marihal, according to their rights, as decided by the order of Diwan Saheb in 1925. The plaintiffs will not be entitled to erect dams and irrigate their fields so as to cause injury to the villagers of Marihal unless they establish a prescriptive right of easement. As the stream known as "Chalkatti" or "Shivecha Odha" touches the boundaries of both the villages, Marihal and Kardeguddi, the plaintiffs cannot claim the ownership of either the bed of the stream or water therein. Under section 37 of the Land Revenue Code, it shall be the property of Government. If the plaintiff claim to take water of the stream as an easement, it could be acquired only by 60 years enjoyment as of right, as against Government. (*Vide* section 15 of the Easement Act).

6. It is clear from the decision of the Diwan Saheb of Sangli, that the villagers of Kardeguddi have no right to erect dams on and irrigate their fields from this stream known as Chalkatti. It is also clear from the statement of the surveyor before the Mamlatdar of Shahapur on the 14th December 1926 that in the old survey records, no bandhara on the stream known as Shivecha Odha by the villagers of Kardeguddi is mentioned from S. Nos. 41 to 68, on the contrary, three bandharas by the villagers of Marihal are mentioned therein. Secondly, plaintiffs have not even alleged, in the plaint, permission from the State Government to erect such bandharas. It should therefore be contended that the plaintiff have no right to erect dams on and take water by means thereof from the stream.

7. Even assuming without admitting, that plaintiffs prove that they have been irrigating the lands by means of Kaccha Bandhara, they are nevertheless, not entitled to claim relief against

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Government in view of Government's right to regulate and distribute the supply of waters flowing in natural channels. In the leading case of Robert Fisher *v.* Secretary of State, I.L.R. 32 Mad. 141 it is held that the Government has the power under Customary law in India to regulate in public interests, the collection, retention and distribution of waters of rivers and streams flowing in natural channels, without any detriment to the rights of other riparian owners. This paramount right of the Government exists independently of the ownership of the bed of the stream. This right of the Crown to regulate collection, retention and distribution of waters of rivers and streams flowing in natural channels, has been given statutory recognition in section 2 clause (*a*) of the Easements Act, which provides that nothing contained in the Act shall be deemed to derogate from this paramount right of the Government. In view of this provision the plaintiff's contention that they have the right to take water from stream will not be tenable.

8. Assuming without admitting that the plaintiff's have such right, as mentioned by them in the plaint, against the Government of the Sangli State, it can still be contended that this right cannot be enforced against the successor Government by merger. It is an established principle, that on the cession of a territory, an inhabitant of a ceded territory can make good in the municipal courts established by the new sovereign, only such rights as the new sovereign, has recognized and not the rights enjoyed under the rule of his predecessors. (Vajesingi *v.* Secretary of State, 26 Bom. L.R. 1143, Sayed Asra Ahmed *v.* Darga Committee of Ajmer, 49 Bom. and p. 235). The rights of plaintiffs, if any, with respect to this stream have not been recognised by the Government of Bombay. The plaintiffs, therefore cannot maintain this suit against Government.

9. Plaintiffs are not entitled to declaration and injunction as prayed for.

For these reasons, it should be contended that the suit fails and should be dismissed.

S. Bel. 7151